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# SPECIAL JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

## ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS AND EVIDENCE

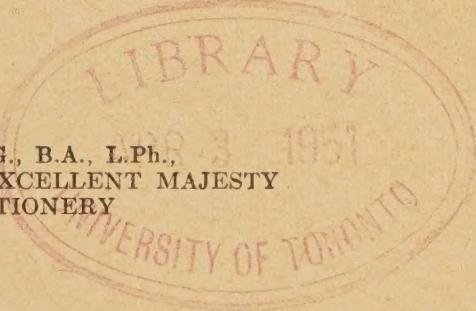
No. 6

FRIDAY, MAY 21, 1948

WITNESS:

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa.

OTTAWA  
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1948





## MINUTES OF PROCEEDINGS

FRIDAY, 21st May, 1948

The Special Committee on Human Rights and Fundamental Freedoms met at 11.00 o'clock a.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

*The Senate:* Honourable Senators Crerar, Wilson.

*The House of Commons:* Messrs. Croll, Dechene, Hackett, Harkness, LaCroix, Marier, Smith (*York North*).

The Committee resumed consideration of the Draft International Declaration on Human Rights referred to member governments of the United Nations.

Articles 10 to 14 were reviewed.

Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was called. He made a statement summarizing the comments and suggestions of member governments relative to the articles of the declaration under review and was questioned.

The witness retired.

The Committee adjourned at 1.00 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,  
*Clerk of the Committee.*



## MINUTES OF EVIDENCE

HOUSE OF COMMONS

May 21 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met this day at 11 a.m. The Right Honourable J. L. Ilsley (Joint Chairman) presided.

The CHAIRMAN: We were discussing article 10 when we adjourned the other day. Mr. Henry has received some additional comments on article 10 which perhaps should be placed before the committee.

### D. H. W. Henry, counsel, Department of Justice, recalled.

The WITNESS: There is one comment which the committee might wish to note. It is in document 18 at page 23. This comment was made previously to the drafting committee by the representative of the Philippines, and it reads as follows:

It was recognized that the right of emigration, affirmed for immigration into and transit through other countries. It is recommended that these corollaries be treated as a matter of international concern and that members of the United Nations co-operate in providing such facilities.

Perhaps it would be appropriate if I again read to the committee the final draft of article 10 as it was adopted the other day by the drafting committee.

(1) Every one is entitled to freedom of movement and residence within the borders of each state.

(2) Every one has the right to leave any country including his own.

The CHAIRMAN: Are there any further comments on that article before we pass on?

Mr. MARQUIS: Mr. Chairman, I see at the beginning of article 10 the words:

Subject to any general law not contrary to the purposes and principles of the United Nations charter and adopted for specific reasons of security or in general interest.

and so on.

I ask myself if those words should not be embodied as a general article and applied to all the sections where limitations are imposed. This limitation applies only to article 10. I feel that there will be the same kind of limitations concerning all articles where principles are stated and that the rights of a country should be protected in order that each country may adopt regulations to protect the public interest. It would cover all the articles, and if it is possible to make a suggestion of that kind I feel it will permit the adoption of all the general principles. I feel that if it is in the public interest to adopt regulations to protect the safety of the state it would be better to have it said in the declaration itself.

The CHAIRMAN: I would feel better about the declaration if it were all subject to some such clause as that. The only thing is it might be odd to make a statement such as this, subject to that provision all men are born free and equal in dignity and rights, that is to say, a statement of that kind is subject to any general law not contrary to the purposes and principles of the United Nations charter and adopted for specific reasons of security or in the general interest.

Mr. MARQUIS: Yes, but perhaps if it were stated at the end of the declaration that nothing in this declaration would prevent a state from adopting regulations to protect the safety of the state, or to safeguard public interest, or some such principle as that, it would be better. Naturally what the honourable chairman is saying is all right. It would not cover a general principle which is entirely a matter of right for each individual.

The CHAIRMAN: I think myself that is a very good suggestion because if you do not have some clause of that kind there will be continual argument of the kind we have had in this committee, argument that there was no exception to the principle laid down, and we can think of proper exceptions to nearly every clause.

*By Mr. Croll:*

Q. Did I understand Mr. Henry to say that the clause that was adopted was adopted just recently, the last clause he had reference to?—A. That is right, sir. The drafting committee of the human rights commission is meeting now, and within the last few days adopted that article in final form to submit to the commission. That was adopted, in fact, on May 17.

Q. If I appear to repeat a question that has already been asked you will forgive me for it, but I am interested in the words, "the right to leave any country, including his own." Was that agreed to by all the members of the committee? Was that a unanimous recommendation?—A. That was approved by five votes to none with two abstentions.

Q. Who were the abstainers?—A. I am sorry, my information does not give that.

Q. Who voted for it? Does it say that?—A. No.

Q. I think it is important to see who the abstainers are because it is notorious that particular part of the section is not applicable in many countries in Europe, particularly those countries behind the iron curtain, as we often call it, that they are not being given the right to leave any country, including their own. I wonder whether their representatives have agreed to it, or have approved of it in the committee. That is my point. Can you enlighten us on that?—A. I will attempt to find out how the vote went and perhaps let the committee know next time we meet.

Mr. HACKETT: The suggestion of Mr. Marquis indicates to my mind that we are stating principles, and then we are going to put in a rider that they shall not have application in any individual case. It may be necessary to put in a provision of that kind to get support, but when we have a diluted principle, or a principle which is not of universal application, how far ahead are we? In the confines of the committee I can say, without it being thought that I am doing anything more than taking an example, that the principle stated would clash with what was done concerning the Japanese in Canada, as I understand it.

The CHAIRMAN: Yes.

Mr. HACKETT: The exceptions suggested by Mr. Marquis would warrant what was done.

The CHAIRMAN: Yes.

Mr. HACKETT: When you get to that point it seems to me that you have merely said, "Here is a principle that is not of universal application". My query is what is the usefulness of stating a principle if it is not of universal application?

The CHAIRMAN: The usefulness is that it is a principle to be adopted and respected unless there are strong or special reasons to the contrary. I think that nearly all these articles are subject to exceptions, if you take the wording of them. We have gone over a lot of them. The principle is laid down, for

example, that everyone has the right to life. Everyone has not the right to life if you agree to the principle of capital punishment. The principle is laid down in this article that everyone shall have the right to leave their country. I think it should be open to a country to deny exit permits if, let us say, doctors or trained nurses were very greatly needed in the country and they were leaving because they could get higher pay somewhere else. I think it might be necessary for a temporary period to deny them exit permits under certain conditions. All those difficulties have been pointed out as we have gone through these articles. The answer has been, "Oh well, these are general principles; there will have to be exceptions from time to time". That has made great difficulties.

Mr. LACROIX: All these articles have exceptions.

Mr. CROLL: For the same reason you can argue it is not worth while to have the ten commandments. Yet they are there. They are moral principles. Many people feel bound by them.

Mr. HACKETT: They feel more ardently that their neighbours are bound by them.

Mr. CROLL: Yes, that is a good observation, but nevertheless all of us will agree it is very useful and necessary in our lives to have those principles. There are people who deviate from them. Then we bring in the Minister of Justice.

Mr. HACKETT: Thank you for your answer, Mr. Chairman.

Mr. MARQUIS: Is it not true there is no general rule without an exception, and that the exception confirms the rule? We have that in grammar. We have that in everything. We have a general principle to follow but in the matter of governing people I think there should be some exceptions, and if the governments of every country do not want to abrogate their rights to administer and to legislate there must be some kind of limitation to protect the rights of the nation. That would not necessarily mean that we want to discard the principle in itself. We would be bound to follow the general rules subject to the exceptions which may apply in some circumstances that may arise or that may exist in the different countries.

Mr. LACROIX: Has Russia approved the article?

Mr. CROLL: That was the question I asked and I did not get an answer.

Mr. HACKETT: To take a practical instance, I cannot speak for everybody, of course, but I was under the illusion that when the United Nations decreed the partition of Palestine that a decision had been taken to carry it out. When it came to carrying out that decision the reluctance of those upon whom the burden fell to carry it out was such that we seemed to have a new interpretation of the duties of the General Assembly and of the Council which, according to me, means that no decision of this great body is ever susceptible of forceful implementation.

Mr. CROLL: You say forceful implementation?

Mr. HACKETT: Yes. I was under the impression, and I may be wrong, that when the United Nations decreed that there would be partition that the United Nations was going to take the necessary means.

Mr. LACROIX: To sustain their decision.

Mr. HACKETT: To sustain their decision by force, and when we got to the point of doing that we found that the clauses under which, in my mind, anyway, that illusion had arisen did not have, according to the interpretation of the people who were entrusted with enforcement, the significance that I thought they had. If that has any bearing on the discussion here it points to a type of futility. That may not be a good word, but it is within the range of what I mean.

The CHAIRMAN: I got the impression, I must say, that the readiness of some countries to subscribe to this declaration without exceptions is caused, to some extent, by the fact that it has no juridical force; that it is not a treaty they are signing. They are prepared to subscribe to it, but not necessarily to carry it out. They will try to carry it out or they will aim at it. They will say these are good principles. I think that is the case.

They would be very much more careful about signing the covenant. The covenant itself, I think, will not contain all the exceptions which would be necessary in a well-drafted statute. If the covenant gets before the court sometime, I would doubt whether anyone would know just what some of the clauses in the covenant mean, no matter how well it is drafted. I think that has been the experience of the United States. Their bill of rights was obscure, to some extent, until interpreted by the courts.

Mr. HACKETT: Yes, there came a strong man like Marshall who interpreted and now it is being diluted by a court which has a different point of view.

The CHAIRMAN: Yes. I would think any attempt to put the covenant into legislation would result in specious legislation. Any attempt to do that necessitates a great deal of litigation.

Digressing a little, I feel that if Canada were to adopt a domestic bill of rights, the result would be a great deal of litigation. After a while, perhaps, the meaning of these general clauses would be settled by the courts and litigation would subside. It must be remembered that the United States supreme court reversed itself after awhile.

If we subscribe to anything like this declaration, we must realize there will be exceptions to the wording.

It is all right to say every rule has an exception but that does not apply in drafting a statute. The exceptions have to be stated or the rule itself applies.

Mr. MARIER: Mr. Chairman, instead of putting exceptions to article 10 or the various articles of the declaration, perhaps we could put in a general article such as article 32. It states,

All laws in any state shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter, in so far as they deal with human rights.

Perhaps, by a general clause such as that, we could reserve certain rights in case of an emergency for the benefit of any country. The same general principle would apply to all the other clauses instead of applying exceptions to each clause individually.

The CHAIRMAN: That is what Mr. Marquis suggests. He suggests there ought to be a general clause, a sort of escape clause.

Mr. MARIER: Yes, because if we start stating exceptions to every clause in cases of emergency, we will never be through with any of these clauses.

Mr. MARQUIS: I presume there could be a general limitation clause put in at the end of this declaration of rights.

Mr. HACKETT: Thank you, Mr. Chairman, for your answer. In this committee we are dealing with human rights and in another committee we are dealing with the Geneva Trade Agreement. I have been impressed, especially after the short and very interesting experience I had last Autumn, that the escape clauses are so numerous the chance of applying the principle when it is counter to the interests of a dominant entity are extremely remote. If that be true, what is the purpose of going on with these principles which everybody admits, I think, should apply to everyone except himself?

Mr. LACROIX: You are right.

The CHAIRMAN: Well, I think the subscription to this will have some effect on legislation.

Mr. HACKETT: That is probably a very fair answer.

The CHAIRMAN: I believe the signing of the Charter has had some effect, especially that discrimination clause in the Charter. It is a very important clause and it is repeated in this declaration.

I do not know, but perhaps our attitude should be something like that of South Africa. The South Africa comment is very analytical and not too respectful to a great many of these clauses. I do not know whether you wish to elaborate on that.

Mr. HACKETT: I do not know what it is, but I do know the attitude of the white population in South Africa towards the black population is one which, living as we do in a northern country where we have not the same problems, would not fall upon a very sympathetic ear.

The CHAIRMAN: No. Perhaps, we had better go on. There is nothing more in article 10, so let us turn to article 11.

Everyone shall have the right to seek and be granted asylum from persecution. This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Are there any comments on that article, Mr. Henry?

The WITNESS: Yes, sir. There is now in the hands of the committee a document numbered 37 which is a collation of the comments which were received up to April 30, 1948. It is a convenient reference for those who wish to follow the comments.

At page 24 of document 37, the Netherlands government suggests it is possibly doubtful whether the problem of asylum comes within the scope of the declaration. That government has preferred not to make a commitment at this time.

The government of Brazil draws attention to the fact that the article provides asylum which shall not be accorded to criminals. It is suggested that an exception to this should be made in the case of persons accused of crimes of merely a political nature.

Mr. HACKETT: We know that, while it is probably buried in a limbo which will never yield up its dead, there is a treaty between the United States and Canada which makes smuggling a crime. It entitles the government of the United States to come to Canada and arrest people who might have—

Mr. MARQUIS: Not inside this country; they have to arrest the people over the border.

Mr. HACKETT: No, you read the treaty. I merely mention that to show it would entail a very careful definition of a criminal. At one time, in some parts of the world, horse stealing was a crime for which people were hanged. We would have to have, I would think, a very careful definition of what is meant by criminals and what sort of infractions of the law constitute crimes.

Mr. MARIER: The definition of crimes differs in every country.

Mr. HACKETT: Certainly.

The CHAIRMAN: Does this include, for example, those accused or guilty of political crimes in other countries, those who offended against some law or advocated what another state or country said they should not advocate? Let us say that the situation becomes such the persons feel they have to flee. Ordinarily, we were always taught they could go to England, at any rate, and England would grant them the right of asylum.

Mr. HACKETT: A lot of the population in the part of the country from which I come and possibly the part of the country from which the chairman comes was made up after the Civil War of people who had done things which were considered reprehensible and even capital offences in the United States. They found complete protection here.

The CHAIRMAN: So far as they are concerned, this article is ineffective if they are guilty of a criminal offence. It does not do any harm nor does it do any good, so far as they are concerned. It does not mean we have to keep them out, nor does it mean we have to let them in.

Mr. MARQUIS: Each country, individually, defines what constitutes a crime. This does not change the situation at all. I do not know if it would be possible to have a definition of crime which would satisfy all the nations who may agree to this declaration. I am entirely in accord with you, Mr. Hackett, but it is rather difficult to find one definition. One nation may decide a certain infraction is a crime and another nation may decide a different infraction is a crime.

Mr. HACKETT: Up to a few years ago, extradition treaties between most countries—Mexico was one exception—had a few well-defined infractions which were considered crimes and which warranted extradition.

The CHAIRMAN: I think I was wrong in saying we would not have to keep them out because this is a positive declaration. It says, "The right to seek and be granted asylum from persecution. This right will not be accorded to criminals—". As you see, it may be a statement that will not let persons accused or guilty of political crimes in, let us say, countries of eastern Europe come to this country. That may be one reason it is in there. It may be a dangerous article, from that point of view.

Mr. HACKETT: That was the decision in the famous Thaw case. In the United States, they have a term, "moral turpitude", whatever that means, for keeping people out.

Mr. LACROIX: Would it mean if we agreed to that article we could refuse to allow communists to enter Canada?

The CHAIRMAN: No, it does not mean that.

Mr. MARQUIS: Unless we declare they are criminals.

Mr. MARIER: A man is not supposed to be a criminal because he is a communist.

Mr. LACROIX: The article says,

This right will not be accorded to criminals nor to those whose acts are contrary to the principles and aims of the United Nations.

Mr. MARIER: A communist will be a criminal when your bill is passed.

Mr. LACROIX: You could pass an order in council forbidding the entry of communists into Canada.

The CHAIRMAN: Well, is there any further discussion on that article? It may be, Mr. LaCroix, if a country said it is a crime to be a communist, the right of a man who is a communist and who, therefore, is a criminal in this country that I have assumed to exist, shall not have the right to seek or be granted asylum from persecution. I do not know what that means, but it sounds as if he might be debarred. If you could do that to communists, you could do it to anti-communists where it is a crime to be an anti-communist.

Mr. MARIER: But he could be a fellow who is not desirable and we would be forced to give him asylum, then.

Mr. MARQUIS: Perhaps it would be better to have the article drafted as it is here. If you define what constitutes a crime, it will prevent our government from defining what constitutes a crime in this country. Under this article, we have a right to decide what constitutes a crime and we can forbid undesirable emigrants from coming to the country.

The CHAIRMAN: Did you say that the drafting subcommittee agreed on this article as drafted?

Mr. HARKNESS: Yes, with two exceptions.

The WITNESS: That was the last article, sir. There has been an amended text for article 11 adopted by the drafting committee which I could read now or after the other comments of the governments, whichever you desire.

*By the Chairman:*

Q. Perhaps you had better read it now.—A. "Everyone has the right to seek and may be granted in other countries asylum from persecution. Prosecution, genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations, do not constitute persecution". This text was adopted by six votes in favour and none against with one abstention. The abstention in this case was USSR.

*By Mr. Hackett:*

Q. Would you read that again?—A. Yes, sir. "Everyone has a right to seek and may be granted in other countries asylum from persecution. Persecution, genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution".

Q. Just what does that mean?

Mr. MARIER: Prosecutions?

*By Mr. Hackett:*

Q. I am thinking of our attitude toward people who came here in great numbers before the war to escape impossible conditions of livelihood. Those persons were accepted here largely because of the terrible ostracisms under which they were labouring at home. What bearing does this clause have upon the attitude of the Canadian government toward those people?—A. Well, sir, the sense seems to be that any person may seek asylum but the granting of asylum on the part of the government concerned is discretionary because they have changed the wording to say that everyone has the right to seek, and may be granted in other countries, asylum from persecutions. The point Mr. Hackett suggests would be a question of discretion of the government who is asked to admit the individual.

Q. Then do they not define what persecution is?—A. Yes, they suggest that prosecutions which arise generally from non-political crimes do not constitute persecution.

Mr. MARQUIS: Prosecution for political crimes is persecution.

The CHAIRMAN: That may be. Once it is established there is in fact persecution then the person persecuted has the right to seek asylum. That is all the right which is given and the rest of the clause says that asylum may be granted. It does not go very far.

Mr. HACKETT: No, and it limits it again by restricting the meaning of the word persecution. The people whom I have in mind might be persecuted according to the definition when their life was made almost unbearable.

Mr. HARKNESS: The addition of the word "may" makes the whole thing practically meaningless, does it not? It removes all onus on any country to grant asylum and as long as there is no onus on any country to grant asylum it means that anybody can be a refugee from his own country, which amounts to meaning nothing. I would say the clause as amended is practically worthless.

Mr. HACKETT: I think we must accept what the chairman has said. There is very little that is mandatory and it is hoped that a statement of what should be done may yield some general benefit although it is not susceptible to enforcement.

The CHAIRMAN: Do you think it is necessary to read the comments made on that clause and which led up to the final draft?

Mr. HACKETT: The comments of the Union of South Africa are very interesting.

The CHAIRMAN: Perhaps you might read them, Mr. Hackett.

Mr. HACKETT: Mr. Henry has them in front of him, perhaps he could read them?

The WITNESS: Yes, I have the comments and perhaps I might read the comment in full: "The first part of this article appears to be in conflict with every restrictions on immigration existing anywhere in the world. The second part seems to say that criminals and persons who have acted 'contrary to the principles and aims of the United Nations', are not to be granted asylum from persecution. This would mean that once convicted of a crime or once having acted contrary to those principles and aims the offender forfeits his right to asylum, on whatever grounds he may be persecuted. There is the further objection that the phrase 'those whose acts are contrary to the principles and aims of the United Nations' is so wide and vague as to mean everything and nothing. Would this category of persons include, for instance, the members of a government who pursued a policy which is contrary to a recommendation of the United Nations? Would the supporters of such a government fall within the same category?"

There have been comments from the United Kingdom and from the United States. The United Kingdom comment is contained in document 36, pages 4 and 5. The U.K. government suggested the following draft: "Everyone shall have the right to seek and may be granted asylum from political, racial and religious persecution." It was suggested "that the second sentence of the present draft should be omitted and the comment is made that a criminal seeking refuge is not a person seeking asylum from persecution. A prohibition against giving refuge to criminals is hardly suitable in a declaration of ideals."

Mr. MARQUIS: This seems to be an improvement on what existed before because when somebody was persecuted in some countries he had not the right to leave the country. According to this draft he has the right to seek asylum elsewhere and it remains in the hands of the other country to decide whether it will receive him.

The CHAIRMAN: I think it may have some positive value there.

The WITNESS: The comments of the United States are to be found in document 41 at page 5. Their comment is merely a suggested revised draft which reads as follows: "Everyone is entitled to the right to seek and be granted temporary asylum in other countries to escape persecution."

The CHAIRMAN: Perhaps we can pass on to article 12, which reads: "Everyone has the right everywhere in the world to recognition as a person before the law and to the enjoyment of fundamental civil rights."

The WITNESS: The Netherlands government, at page 25 of document 37, suggests that it must be understood that this article does not exclude a legal provision that special categories of individuals, for instance married women, will need the authorization of other individuals when they have to appear before a court of law. I think perhaps the principle is well recognized in Canada; for instance, minors must sue by their next friends or guardians.

Mr. HACKETT: Yes, as do married women.

The WITNESS: Married women, and lunatics.

The CHAIRMAN: What was the occasion for the article? What abuse was there thought possible in the minds of the draughtsmen?

The WITNESS: I am not sure what they particularly had in mind, but it seems to me it is a further elaboration of the general articles appearing at the beginning of the declaration.

The CHAIRMAN: I suppose there have been outlaws in the past. There have been persons, centuries ago at any rate, who were outlaws and who could not appear before the courts at all. They had no right. Has that been the case in recent times? Are there any countries in the world today where people have no right to appear before the courts?

Mr. HACKETT: I do not want to say there are people who have no right, but in the view of those who voted laws affecting Christians in the early days, there was considered to be a partnership between the man and the woman and they each had their department in which they were more or less supreme but the head of the partnership, for business purposes, was the man. The woman under that theory was not free to engage in litigation without the authorization of the partner or business manager. The rights were, of course, family rights and they were enforceable only through an action brought by the head of the partnership, or the "community" as it is called in Quebec. That has given rise to a good deal of agitation and adverse comment. Of course the other side of the argument was to the effect that the woman was the owner of half of everything that fell into the partnership and that was the beneficial side of the arrangement as far as she was concerned, but she could not appear in the courts without the authorization of her husband. In many cases where her rights appeared to be involved they were family rights and they could only be exercised by the head of the community. To that extent we have outlawed persons if you will use that expression.

The CHAIRMAN: Was there a final draft agreed upon?

The WITNESS: Yes, there was, sir.

Mr. HACKETT: I might add that I do not suppose anything we do here can modify the civil law.

Mr. MARQUIS: Should not this article read as follows: "Every mentally able major person—".

The CHAIRMAN: Yes, but there must be something implied here to indicate that we are not including lunatics and minors.

Hon. Mr. CRERAR: Has there been any definition submitted anywhere with respect to "fundamental civil rights". This article asserts "everyone has the right to the enjoyment of fundamental civil rights". What is the meaning of that term?

Mr. MARIER: Perhaps you should read the comments of South Africa which appear at page 25 of document 37.

The WITNESS: The comments of South Africa read as follows: "This article introduces a further refinement of confusion into the already chaotic picture of proposed fundamental human rights. It purports to include in such rights, the right to the enjoyment of so-called fundamental civil rights. This is a definition of the unknown, by what is even more unknown. What are fundamental civil rights? Are we to have another convention and another declaration to define these? Are we to delve from fundamentals to fundamentals until we have cut every root of national autonomy?"

The CHAIRMAN: What are the other comments?

The WITNESS: The comment from Brazil, sir, was to the effect that this article should be incorporated with article 3 of the present draft, which is of a much more general nature. It was felt that was a better position in the document for this clause. The United Kingdom government whose comments appear in document 36 at page 5, give the suggestion that the article might well be moved up to a position before article 4. The government of the United States has proposed a draft which appears in document 41 at page 6. The draft reads as follows: "Everyone is entitled to the right to recognition as a person before the law."

The draft as finally approved by the draughting committee at Lake Success reads as follows: "Everyone has everywhere the right to recognition as a person before the law."

Hon. Mrs. WILSON: Even married women are persons then?

Mr. MARIER: There is no doubt about that.

Hon. Mrs. WILSON: I thought you were classing them with lunatics a moment ago.

Hon. Mr. CRERAR: The law would be the law of the country in which the person resided.

The CHAIRMAN: Yes. I wish I knew what worried the person that started to set this article down on paper. What is the purpose of the article? What evil is it designed to guard against? Is there any indication anywhere?

The WITNESS: I have not seen any, sir, but the examples which have already been discussed are examples of persons who are under disabilities, and there are others. I think what they seemed inclined to guard against is the deprivation of the right of an individual to appear before courts. I do not know if any examples of that have come up in any countries at the present time. I suggest that perhaps the draughtsmen were looking to the future and felt they should make sure every person should have legal rights apart from his fundamental rights.

Mr. MARQUIS: Article 1 reads:

All men are born free and equal in dignity and rights.

If they are equal in rights they have the right to appear before the court. It is a real consequence of having full rights.

Mr. HACKETT: That is again qualified. A husband must give his consent. There are one or two exceptions, but if he refuses she goes to the court and gets it. For instance, where a husband has been remiss in his duties in the administration of her affairs, of the affairs of the community, she goes to the court and says, "This man is mismanaging."

The CHAIRMAN: I would not take those provisions as any exception to this principle at all. Those are more procedure than anything else.

Mr. HACKETT: A matter of discipline.

The CHAIRMAN: It does not mean that a married woman is not being recognized as a person by the law. For me the difficulty with this provision is to know why anyone ever—

Mr. HACKETT: What was the origin of the worry.

Mr. MARQUIS: When we want to prove too much we prove nothing.

The CHAIRMAN: Perhaps we cannot get very much further with that one. Let us take article 13.

"1. The family deriving from marriage is the natural and fundamental unit of society. Men and women shall have the same freedom to contract marriage in accordance with the law.

2. Marriage and the family shall be protected by the state and society."

Mr. MARIER: That is very vague.

The CHAIRMAN: Yes. What are the comments on that?

The WITNESS: The comments of some of the governments are found in document 37 at page 26. The government of Mexico considers that the article fails to lay down the principle of freedom to contract marriage sufficiently broadly, and proposes the following draft:

Men and women shall have the same freedom to contract marriage, and the law guarantees them that freedom without distinction as to race, nationality or religion.

Brazil suggests that there is a flaw in the drafting technique of this article in view of the fact that it has been stated in some of the comments previously that the word "men" comprises both men and women. In this article, however, it is clearly indicated that the words "men and women" are to be used in a restrictive sense. It is suggested it would be preferable to use an expression such as "every one" or "every person." You will recall that is in accordance with the suggestion of the United States, too, which would like to see some such heading before every article.

The Brazilian government has suggested that certain additional wording might be desirable as follows:

Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded.

Then the Brazilian government put on record the following draft prepared by the Inter-American Juridical Commission which it suggests should be added to the article.

The parents have the right of paternal power over their children during the minority of the latter and the essential obligation to maintain and support them.

It is suggested that this might be improved as follows:

Parents shall have parental power over their minor or non-emancipated children, involving the obligation to provide them with sustenance and education.

The comments of the Union of South Africa on this article indicate that the words, "men and women shall have the same freedom to contract marriage in accordance with the law," are obscure and then they ask the following questions:

Is it the intention to say *inter alia* that there shall be no difference as to the respective ages at which men and women may contract marriage, that where there is an *annus luctus* for a widow there must be the same *annus luctus* for a widower, and that where a state recognizes the right of men to contract polygamous marriages, it is bound also to recognize the right of women to contract polyandrous marriages? It may be said that the answers to these questions are to be found in the words "in accordance with the law," but if that is so, this provision becomes meaningless, because that would leave every state free to impose legal restrictions upon the freedom of women to contract marriage which are not applicable to men, and vice versa.

There is also a comment which appears in document No. 18 at page 23. It is a comment which was made before the drafting committee when the first draft was prepared. The representative of Lebanon suggested an amendment to article 13 by substituting the following for the second sentence of the text and two other sentences following it.

The family deriving from marriage is the natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent—

*By Mr. Hackett:*

Q. What is the page—A. It is 23.

It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the state and society. The representative of the United Kingdom suggested the following additional wording.

Married persons shall have the right to reside together in any country from which they cannot be lawfully excluded.

That was the draft which Brazil suggested might well be incorporated. The representative of Uruguay at the same page suggested that his country would not accept any national or international document, whether legal or political, embodying assertions of a religious nature, on account of his country's constitution which provides for the separation of church and state while at the same time it ensured freedom of worship and instruction.

There have also been comments on article 13 by the United Kingdom and the United States. The United Kingdom comment is found in document 36 at page 5. The following redraft was suggested. It is in four parts.

(1) The family deriving from marriage is a natural and fundamental unit of society. (2) Marriage and the family should be protected by law.

Q. Just a moment, please. I have the page. "His Majesty's government wish to suggest the following text in lieu of the original one."—A. Two paragraphs down under article 13.

Q. Thank you.—A. "(2) Marriage and the family should be protected by law."

*By the Chairman:*

Q. Should be?—A. "Should be protected by law."

(3) Men and women shall have equal rights to contract or dissolve marriage in accordance with the law.

(4) Marriage shall not be contracted before the age of puberty and without the full consent of both intending spouses.

The comments of the United States' government appear in document 41 in the form of a new draft which is found at page 6 under the heading, article 13. I beg your pardon, there is not a new draft. It is considered by the government of the United States that this article is unnecessary as the rights are sufficiently protected elsewhere throughout the declaration. At Lake Success the revised draft adopted by the drafting committee reads as follows:

(1) Men and women shall have equal rights as to marriage in accordance with the law. Marriages may not be contracted without the full consent of both intending spouses and before the age of puberty.

(2) Marriage and family shall be protected by the state and society.

Mr. HACKETT: The question of equal rights would seem to raise a difficulty with regard to the forum for divorce. It would mean a multiplicity of such jurisdictions.

The CHAIRMAN: Well, does this have anything to do with divorce?

Mr. HACKETT: It says, the right to contract marriage, and, I suppose that if you are going to get into something the implied right of getting out of it goes with it. If people have equal rights to marriage, then you may have more than one forum which could decree a dissolution of marriage which is a contradiction, it seems to me, of the accepted doctrine of marital domicile. I am sure that you, Mr. Chairman, are familiar with the practice of people who go from Canada to a neighbouring state take up residence there for a period of time that satisfies the laws of that state and get a divorce. Our courts have held such divorcees to be invalid, if that court was not the court of the marital domicile. The marital domicile is—well, I shall not go into that, but it is one and, in this instance, it seems to me there would be two.

The CHAIRMAN: I would not have thought, in reading it, it went as far as that.

Mr. HACKETT: I shall not urge that.

The CHAIRMAN: It may, and there may be that implication from the acceptance of this principle.

Mr. HARKNESS: Is not this whole clause somewhat in the nature of an unjustifiable attempt to interfere with the religious ideas, habits, customs and laws of certain people. For example, child marriages are permitted in India and China and polygamous marriages throughout the Moslem world. This article would appear to me to be interfering somewhat with that. It does not seem to me the United Nations or ourselves, as a party to it, should be attempting to impose our ideas of what the family should be and what marriage should be on another people who have different ideas.

The Moslems, have, as part of their religion, the idea of polygamous marriage. In this country, it is a crime. However, I see no reason why we or the United Nations should try to make it a crime for all people whose religion calls for it. It would seem to me that the whole article is more or less in the nature of an unjustifiable attempt to force people of different cultures to come together on what we might call the norm.

*By the Chairman:*

Q. Would you tell us what was agreed upon again?—A. I will read the final draft.

1. Men and women shall have equal rights as to marriage in accordance with the law.

*By Mr. Hackett:*

Q. Just stop there for a moment. Does that generic term of marriage not include dissolution as well as the contract of marriage? Would you not think so?—A. It does not say so.

Q. Just read that again.—A. "Men and women shall have equal rights as marriage in accordance with the law."

Q. That means equal rights to enter and equal rights to dissolve.

The CHAIRMAN: Yes, it appears to.

Mr. HARKNESS: It seems to me the whole general question of marriage is one in which the United Nations should not interest itself. It is a matter of national or religious custom and ideas. It is not a thing in which we should try to interfere.

Mr. MARQUIS: If the second sentence of the drafted article 13 were deleted, I think it would suit the purpose because it would state a general principle.

The family deriving from marriage is the natural and fundamental unit of society.

If we delete the second sentence and go to the third, it would read,

Marriage and family shall be protected by the state and society.

The CHAIRMAN: Then, I suppose the family there does not necessarily mean the family where there is a monogamous system only.

Mr. MARQUIS: The family would be organized according to the law of the country, if it is a general principle that the family is the natural and fundamental unit of society. There is nothing to prevent a country adopting laws legalizing polygamy or monogamy.

Mr. HACKETT: I think it comes back to Mr. Harkness' statement. We are talking of the family in terms of a Christian family which is something distinct from unions between men and women in countries in which the Christian religion does not prevail.

Mr. MARIER: Why not keep the last paragraph? It will be sufficient, in my opinion.

Marriage and the family shall be protected by the state.  
This would be a general principle covering everything.

The CHAIRMAN: I think the first sentence, probably, is more or less unobjectionable, that the family derived from marriage is the natural and fundamental unit of society. It may be organized differently in different countries but I suppose that must be the case. I suppose it would be an unnatural type of society where there was no marriage.

Mr. MARIER: It is covered by the second paragraph.

Marriage and the family shall be protected by the state.

Mr. MARQUIS: The first one suggests what a marriage is.

Mr. MARIER: What is the use of stating it.

Mr. MARQUIS: It is for that that the declaration is enacted.

Mr. HARKNESS: I think the whole thing should be left out.

The CHAIRMAN: We have the comments of the various members of the committee.

Mr. HACKETT: I interrupted Mr. Henry when he was reading what the chairman asked him to read.

The WITNESS:

1. Men and women shall have equal rights as to marriage in accordance with the law. Marriages may not be contracted without the full consent of both intending spouses before the age of puberty.  
Marriage and the family shall be protected by the state and society.

*By the Chairman:*

Q. This comes out against child marriages, does it not?—A. It certainly appears to.

Q. You do not happen to know whether on that drafting committee there were countries represented in which polygamy is lawful?—A. I think I could give you the names of the representatives. According to my information the following countries are represented on that committee: Australia, Chile, China, France, Lebanon, the United Kingdom, the United States of America, and Russia.

Mr. HACKETT: You will remember, Mr. Chairman, that the very able gentleman from Lebanon—I think his name was Malik—declared that he was a Christian to lend strength to his argument. He declared that the majority of the population of that country was not Christian.

The CHAIRMAN: I was under the impression the majority of the population of Lebanon was Christian but certainly the majority of the Arabs are Mohammedan.

Mr. HACKETT: That may have been the point he was making because he was trying to point out that he was not making his statements because of his relationship to any religion or because of association with his own religion.

The CHAIRMAN: Article 14: "Everyone has the right to own property in conformity with the laws of the state in which such property is located. No one shall be arbitrarily deprived of his property."

What are the comments?

The WITNESS: The comments are found in part in document 37 at page 28. The government of Brazil suggests that it is not sufficient to say no one shall be arbitrarily deprived of his property and that it should also have the words "without prior and fair indemnity."

Mr. HACKETT: The bank's gold.

Mr. MARQUIS: Without expropriation.

The WITNESS: The Union of South Africa suggests that if it is the intention to say the state may not deprive any person of his property, rather than making a limitation which would render it altogether ineffective, it would be desirable to redraft the article. There are also comments from the United Kingdom in document 36 at page 5.

Mr. HACKETT: Those comments would be interesting.

The WITNESS: They appear about two-thirds of the way down page 5. "Everyone has the right to own property." The meaning of this text is that some right of ownership of private property is regarded as an essential human right. It is not intended to mean that every sort of property must be susceptible of private ownership.

Mr. HACKETT: That is the doctrine of socialism.

The WITNESS: The comments of the American government are in document No. 41 at page 6. That government has merely submitted a new draft which reads as follows: "Everyone is entitled to the right to own property in conformity with the laws of the state in which that property is located and to freedom from the arbitrary deprivation of his property."

At Lake Success it was suggested that the limitation in this provision should be deleted because if a limitation is placed in this provision it might be necessary to place limiting provisions in other articles also. The government of Chile thought it was a meaningless article because, under the present declaration, the government or the state can pass laws prohibiting private ownership. The Russian delegate suggested that the words "individually or collectively" should be added in the first paragraph. He indicated the practice in Russia included communal ownership. I might read the final draft: "Everyone has the right to own such property as meets the essential needs of decent living, which helps to maintain the dignity of the individual and of the home; and not to be arbitrarily deprived of it."

Mr. MARIER: Does it mean that if the individual had too many properties he might be deprived of part of his property?

Mr. HACKETT: As the witness said this is predicated upon collectivism as well as individual ownership.

Mr. MARIER: Yes, but if you limit that to a decent living it means that a man who has large holdings might be deprived of part of them.

Mr. MARQUIS: No, he has a right to have holdings. It does not say that he could not have more.

The CHAIRMAN: No, but it leaves the state free to take the excess away from him.

Mr. MARIER: Yes.

The CHAIRMAN: Which is what has been done in many countries where they limit land holding to 125 acres.

Mr. HACKETT: I do not think it is going too far to say it is a denial of the right to have private property—if it is not a denial it is at least a curtailment.

The CHAIRMAN: I do not see that it is a curtailment. The article just says that so far as those who have signed the declaration are concerned they are not affirming that a person has the right to own anything more than is necessary for dignity of the individual and so on. All the clause says is that the individual has the right to own that much property. Any law that deprived the individual of the right to own anything at all would be contrary to this declaration.

Mr. HARKNESS: As long as the individual was left with a suit of clothes and a handkerchief or two there would be no contravention of this clause.

The CHAIRMAN: It would be argued that those things would not be sufficient. The individual should have personal possessions and sufficient of those things required in a home.

Mr. HACKETT: It is 1 o'clock.

The CHAIRMAN: The meeting will adjourn.